

## SENATE BILL No. 128

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-1-1-8; IC 22-2-14; IC 34-11-2-13.

**Synopsis:** Equivalent jobs and wage discrimination. Provides that an employer may not discriminate against an employee on the basis of sex, race, or national origin by paying a wage less than the wage paid to an employee of another sex, race, or national origin for work in an equivalent job. Requires an employer to keep certain records of wages paid to an employee and to provide certain documentation to the employee, including an annual statement of how the wages were calculated. Requires the department of labor to adopt rules, including specification of certain criteria for determining whether a job is dominated by employees of one sex, a particular race, or a particular national origin. Allows an employee claiming wage discrimination to file a complaint with the civil rights commission. Authorizes a civil action against an employer that fails to comply with certain wage reporting requirements or that takes certain discriminatory actions. Provides for damages against the employer in certain circumstances. Makes conforming changes.

**Effective:** Upon passage.

**Mrvan**

January 8, 2008, read first time and referred to Committee on Pensions and Labor.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## SENATE BILL No. 128

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 22-1-1-8 IS AMENDED TO READ AS FOLLOWS  
2       [EFFECTIVE UPON PASSAGE]: Sec. 8. The commissioner of labor  
3       may do the following:

4       (1) Make or cause to be made all necessary inspections to see that  
5       all of the laws and rules enacted or adopted for that purpose and  
6       that the department is required to enforce are promptly and  
7       effectively administered and executed.

8       (2) Collect, collate, and publish statistical and other information  
9       relating to working conditions in this state and to the enforcement  
10       of this chapter **and IC 22-2-14** and such rules as may be  
11       necessary to the advancement of the purposes of this chapter, but  
12       no publicity of any information involving the name or identity of  
13       any employer, employee, or other person, firm, limited liability  
14       company, or corporation shall be given. It shall be unlawful for  
15       the commissioner or any person to divulge, or to make known in  
16       any way not provided by law, to any person the operation, style of  
17       work, or apparatus of any employer, or the amount or sources of



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income, profits, losses, expenditures, or any part thereof obtained by ~~him~~ **the commissioner or other person** in the discharge of his official duties.

(3) Except as otherwise provided by law, employ, promote, and remove clerks, inspectors, and other employees as needed or as the service of the department of labor may require, and with the approval of the governor, within the appropriation ~~therefor~~, **provided**, fix their compensation and to assign to them their duties. Employees of the department are covered by IC 4-15-2.

(4) Promote the voluntary arbitration, mediation, and conciliation of disputes between employers and employees, for the purpose of avoiding strikes, lockouts, boycotts, blacklists, discrimination, and legal proceedings in matters of employment. The commissioner may appoint temporary boards of arbitration, provide for the payment of the necessary expenses of the boards, order reasonable compensation paid to each member engaged in arbitration, prescribe and adopt rules of procedure for arbitration boards, conduct investigations and hearings, publish reports and advertisements, and do all other things convenient and necessary to accomplish the purpose of this chapter. The commissioner may designate an employee of the department to act as chief mediator and may detail other employees, from time to time, to act as his assistants for the purpose of executing this chapter. Any employee of the department who may act on a temporary board shall serve without extra compensation.

SECTION 2. IC 22-2-14 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 14. Wage Discrimination**

**Sec. 1. As used in this chapter, "department" refers to the department of labor created by IC 22-1-1-1.**

**Sec. 2. As used in this chapter, "employee" means an individual employed by an employer. The term does not include an employee employed by an employer for less than three (3) months.**

**Sec. 3. As used in this chapter, "employer" means a person employing at least six (6) employees within Indiana. The term does not include a nonprofit corporation or association that is exempt from federal income taxation under any of the following sections of the Internal Revenue Code:**

- (1) Section 501(c)(3).**
- (2) Section 501(c)(4)(A).**
- (3) Section 501(c)(7).**

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1       **Sec. 4. As used in this chapter, "equivalent jobs" means jobs or**  
 2       **occupations that are:**

3           **(1) equal within the meaning of the federal Equal Pay Act of**  
 4           **1963 (29 U.S.C. 206(d)); or**

5           **(2) dissimilar but whose qualifications are equivalent, when**  
 6           **viewed as a composite of:**

7               **(A) skills;**

8               **(B) effort;**

9               **(C) responsibility; and**

10              **(D) working conditions.**

11       **Sec. 5. As used in this chapter, "Internal Revenue Code" has the**  
 12       **meaning set forth in IC 6-3-1-11.**

13       **Sec. 6. As used in this chapter, "labor organization" has the**  
 14       **meaning set forth in 29 U.S.C. 206(d)(4).**

15       **Sec. 7. As used in this chapter, "market rate" means the rate**  
 16       **that employers within a prescribed geographic area actually pay**  
 17       **or are reported to pay for specific jobs, as determined by:**

18           **(1) formal or informal survey;**

19           **(2) wage study; or**

20           **(3) other means.**

21       **Sec. 8. As used in this chapter, "person" means an individual, a**  
 22       **partnership, an association, an organization, a limited liability**  
 23       **company, a corporation, a labor organization, a cooperative, a**  
 24       **fiduciary trustee, a trustee in bankruptcy, a receiver, the state, a**  
 25       **municipal corporation (as defined in IC 36-1-2-10), or a legal**  
 26       **representative of any of these persons.**

27       **Sec. 9. As used in this chapter, "wages" means compensation in**  
 28       **a form that an employer provides to an employee in return for**  
 29       **work performed or services rendered, including:**

30           **(1) base pay;**

31           **(2) a bonus;**

32           **(3) a commission;**

33           **(4) an award;**

34           **(5) tips; or**

35           **(6) nonmonetary compensation if:**

36               **(A) it is provided instead of or in addition to monetary**  
 37               **compensation; and**

38               **(B) it has economic value to the employee.**

39       **Sec. 10. An employer may not discriminate among employees on**  
 40       **the basis of sex, race, or national origin by paying wages to**  
 41       **employees:**

42           **(1) at a rate or compensation less than the rate or**

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1 compensation paid to employees of the opposite sex, a  
 2 different race, or a dissimilar national origin for work in an  
 3 equivalent job; or

4 (2) in a job that is dominated by employees of one (1) sex, a  
 5 particular race, or a particular national origin, at a rate or  
 6 compensation less than the rate or compensation at which the  
 7 employer pays to employees in an equivalent job that is  
 8 dominated by employees of the opposite sex, a different race,  
 9 or a dissimilar national origin.

10 Sec. 11. Notwithstanding section 10 of this chapter, an employer  
 11 may pay different wages to employees if the payments are made  
 12 under a:

13 (1) seniority or merit system;

14 (2) system that measures earnings by quantity or quality of  
 15 production; or

16 (3) differential based on any factor other than sex, race, or  
 17 national origin.

18 Sec. 12. An employer that pays different wages in violation of  
 19 section 10 of this chapter may not reduce the wages of an employee  
 20 to comply with section 10 of this chapter.

21 Sec. 13. A labor organization or an agent of a labor organization  
 22 representing employees subject to this chapter may not cause or  
 23 attempt to cause an employer to discriminate against an employee  
 24 in violation of section 10 of this chapter.

25 Sec. 14. The department shall adopt rules under IC 4-22-2 to  
 26 implement this chapter. The rules must include criteria for  
 27 determining whether a job is dominated by employees of one (1)  
 28 sex, a particular race, or a particular national origin. The criteria  
 29 for determination must include:

30 (1) whether the job has been formally classified or  
 31 traditionally considered to be performed by:

32 (A) a man or a woman; and

33 (B) a Caucasian or a member of a minority race;

34 (2) whether there is a history of discrimination against women  
 35 or individuals of a particular race or a particular national  
 36 origin regarding wages, assignment, access to jobs, or other  
 37 terms or conditions of employment;

38 (3) the demographic composition of the workforce in  
 39 equivalent jobs; and

40 (4) a determination of the geographic area used in  
 41 determining market rates.

42 The rules must provide a time frame for retention of records by the

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1 employer concerning the wages paid to a specific employee and the  
 2 method, system, calculations, and bases used to establish, adjust,  
 3 and determine the wages paid to the employees of the employer.  
 4 The rules must provide for protection of the privacy of employees  
 5 and must require that reports not include the names of employees  
 6 or other identifying information.

7 Sec. 15. (a) Upon commencement of an employee's employment  
 8 and at least annually thereafter, an employer shall provide to the  
 9 employee a written statement informing the employee of the job  
 10 title of the employee, the employee's wage, and how the employee's  
 11 wage is calculated.

12 (b) An employer shall make and preserve records, as required  
 13 by rules adopted under section 14 of this chapter, that document  
 14 the wages paid to employees and support the method, system,  
 15 calculations, and bases used to establish, adjust, and determine the  
 16 wages paid to employees.

17 (c) An employer shall preserve the records for the period  
 18 required by rules adopted under section 14 of this chapter and  
 19 shall make reports from the records as requested by the  
 20 department.

21 Sec. 16. Subject to the limitations under IC 22-1-1-8(2), the  
 22 department may use the information and data from reports  
 23 submitted under section 15(c) of this chapter for statistical and  
 24 research purposes.

25 Sec. 17. It is an unfair employment practice for an employer to:

26 (1) take adverse action or otherwise discriminate against a  
 27 person because the person:

28 (A) has opposed an act or practice made unlawful by this  
 29 chapter;

30 (B) has sought to enforce rights protected under this  
 31 chapter; or

32 (C) has testified, assisted, or participated in an  
 33 investigation, a hearing, or another proceeding to enforce  
 34 this chapter; or

35 (2) discharge, discriminate against, coerce, intimidate,  
 36 threaten, or interfere with an employee or another person  
 37 because:

38 (A) the employee inquired about, disclosed, compared, or  
 39 discussed the employee's wages or the wages of another  
 40 employee; or

41 (B) the employee exercised, aided, or encouraged another  
 42 person to exercise a right granted or protected by this

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chapter.

Sec. 18. An aggrieved employee may file a complaint with the civil rights commission under IC 22-9-1-6(e) if the employee alleges a discriminatory practice under section 10, 12, or 13 of this chapter. The civil rights commission shall determine whether the complaint requires action to be taken under IC 22-9-1-6.

Sec. 19. (a) An aggrieved employee alleging a violation of section 15(a), 17(1), or 17(2) of this chapter may file a civil action in a circuit or superior court in the county where the violation is alleged to have occurred.

(b) The department may file a civil action in a circuit or superior court in the county where a violation of section 15(b) or 15(c) of this chapter is alleged to have occurred.

(c) If the court finds against an employer in an action under this chapter, the court shall award the employee or the department reasonable compensatory and punitive damages if appropriate, reasonable attorney's fees, appropriate expert witness fees, interest on unpaid wages at the legal rate of interest, and costs of the action.

(d) If in an action under this chapter, the court finds against an employer under section 15(a), 15(b), or 15(c) of this chapter but within its ruling makes a finding that:

(1) no substantive violation of underlying law has been found; and

(2) the violation is the initial violation of section 15 of this chapter by the employer;

the court may not award any damages or any penalties to the prevailing party. The court may award reasonable attorney's fees, appropriate expert witness fees, interest on unpaid wages at the legal rate of interest, and the costs of the action to the employee or the department.

(e) A civil action under this chapter must be filed not later than two (2) years after the date of the last event constituting the alleged violation for which the action is brought.

(f) The procedures and requirements for an appeal under IC 22-9-8 apply to this chapter.

SECTION 3. IC 34-11-2-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. A civil action under IC 22-2-14 for a violation of wage discrimination laws must be commenced not later than two (2) years after the date of the last event constituting the alleged violation in accordance with IC 22-2-14-19(e).

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1       SECTION 4. [EFFECTIVE UPON PASSAGE] (a)  
2       Notwithstanding IC 22-2-14-14, as added by this act, the  
3       department of labor shall carry out the duties imposed upon it  
4       under IC 22-2-14-14, as added by this act, under interim written  
5       guidelines approved by the commissioner of labor.  
6       (b) This SECTION expires on the earlier of the following:  
7       (1) The date rules are adopted under IC 22-2-14-14, as added  
8       by this act.  
9       (2) December 31, 2009.  
10      SECTION 5. An emergency is declared for this act.

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